

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

v.

**PASCUAL TEJADA, JR.**

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**C.A. No. T18-0023  
18405501864**

**DECISION**

**PER CURIAM:** Before this Panel on February 27, 2019—Administrative Magistrate Abbate (Chair), Associate Judge Almeida, and Chief Magistrate DiSandro, sitting—is Pasqual Tejada Jr.’s (Appellant) appeal from a decision of Magistrate Erika L. Kruse Weller (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violations of G.L. 1956 § 31-14-1, “Reasonable and prudent speed,” and § 31-14-3, “Conditions requiring reduced speed.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On June 4, 2018, Officer Michael Martufi (Officer Martufi) of the Johnston Police Department was dispatched to the scene of a reported motor vehicle accident. (Tr. at 3.) Upon arriving at the scene, Officer Martufi confirmed the reported four-car motor vehicle accident and began conducting an investigation. *Id.* Based upon that investigation, Officer Martufi issued Appellant, the operator of a vehicle involved in the collision, a citation for the above-referenced violations. *See* Summons No. 18405501864.

Appellant pled not guilty to the charged violations, and the matter proceeded to trial on November 15, 2018. *See* Tr. at 1. At trial, Officer Martufi—the first of four witnesses—testified that at approximately nine o’clock in the morning on the day of the accident, he responded to Christy’s Auto Rental (Christy’s Auto) on Old Pocasset Lane in Johnston for a reported four-car accident. *Id.* at 3. When Officer Martufi arrived on the scene, he observed three vehicles in the roadway, all with “disabling damage.” *Id.* The first vehicle that Officer Martufi observed was a red Suzuki “halfway in the roadway and half[way] over the curb.” *Id.* The second vehicle was a silver Toyota, operated by Appellant, facing northbound on Old Pocasset Lane with “heavy front[-]end damage.” *Id.* The third vehicle was a silver Volkswagen facing southbound on Old Pocasset Lane, which also sustained heavy front-end damage.” *Id.* Officer Martufi also observed a white box truck parked in the Christy’s Auto parking lot that sustained a minor dent to its front bumper. *Id.* During his testimony, Officer Martufi noted that it was raining heavily which “played a major factor in this accident.” *Id.*

At the scene, Officer Martufi first spoke with the driver of the Suzuki. *Id.* The driver told Officer Martufi that she was trying to take a right turn onto Old Pocasset Lane from Christy’s Auto. *Id.* Officer Martufi then spoke with Appellant at the scene of the accident. *Id.* at 4. Appellant informed Officer Martufi that as he traveled on Old Pocasset Lane, toward Hartford Avenue, the Suzuki pulled in front of his vehicle. *Id.* Appellant further stated to Officer Martufi that his vehicle became airborne and veered into the opposite lane of travel, striking the Volkswagen head-on. *Id.* The impact of Appellant’s vehicle striking the Suzuki caused the Suzuki to veer off the road and hit a box truck parked in the Christy’s Auto parking lot. *Id.* at 5.

Officer Martufi next spoke with Thomas Paolucci (Mr. Paolucci), the driver of the Volkswagen. *Id.* at 6. After speaking with Mr. Paolucci, an independent witness, Linda Cimaglia (Ms. Cimaglia), approached Officer Martufi and explained that she was driving directly behind the Volkswagen and observed everything. *Id.* at 7. Ms. Cimaglia told Officer Martufi that Appellant's vehicle traveled at a high rate speed. *Id.*

At the scene of the accident, Officer Martufi observed the damage to the vehicles involved in the accident, noting that the damage suggested Appellant's front bumper hit the Suzuki's driver's side front door. *Id.* at 12. Officer Martufi also testified that he found no evidence at the scene, such as skid marks, to suggest that the Suzuki pulled out too quickly in front of Appellant's vehicle. *Id.* at 8.

Officer Martufi further testified that he has been a police officer for eleven years and has been trained and certified in estimating speeds. In his experience as a police officer, Officer Martufi has witnessed a "handful" of accidents, but has "been dispatched to thousands of them." *Id.* at 15. Officer Martufi also stated that he has "never once seen an accident [ ] at a speed . . . under 20 [miles per hour] where three cars were totaled, one car was hit over a curb into another vehicle . . . regardless of weather conditions." *Id.* at 27-28.

Moreover, Officer Martufi testified that due to the heavy rainfall, the conditions required reduced speed, and that a speed reduced to at least five miles below the speed limit would have been a reasonable and prudent speed. *Id.* at 8. Based on his following conversations with Appellant, the driver of the Suzuki, Mr. Paolucci, and Ms. Cimaglia; the damage he observed at the scene; and the road conditions, Officer Martufi issued Appellant a citation for the charged violations. *Id.* at 7-8.

Mr. Paolucci, the driver of the Volkswagen, testified next. *Id.* at 16. On the day of the accident, Mr. Paolucci was driving on Old Pocasset Lane, toward Hartford Avenue, preparing to turn left into Christy's Auto. *Id.* at 17. Mr. Paolucci observed the Suzuki stopped at the entrance of the parking lot, waiting to turn left onto Old Pocasset Lane. Thus Mr. Paolucci stopped approximately sixty feet before the Christy's Auto entrance with his blinker flashing. *Id.* When the driver of the Suzuki noticed Mr. Paolucci stop, she started to pull out of the parking lot. *Id.* Mr. Paolucci testified that the Suzuki "had plenty of room" to turn into the street. *Id.* At that point, Mr. Paolucci noticed Appellant's vehicle driving in the opposite lane of travel "at a higher rate of speed than normal[.]" *Id.* Mr. Paolucci testified that Appellant's vehicle then "hit the [Suzuki] on the left side, bounced off her, became airborne, and slammed directly into the front of [Mr. Paolucci's] vehicle[.]" causing the airbags to deploy. *Id.* Upon impact, Mr. Paolucci "unbuckled and rolled out of the car." *Id.*

The next witness to testify at trial was Ms. Cimaglia. *Id.* at 21. On the day of the accident, Ms. Cimaglia drove directly behind the Volkswagen on Old Pocasset Lane. *Id.* As she was driving, the Volkswagen slowed down, and Ms. Cimaglia noticed the Suzuki trying to pull into the street. *Id.* at 21-22. Ms. Cimaglia stated, "I didn't see anybody coming, and then all of a sudden, [Appellant] was there. . . . It was scary." *Id.* at 22-23. Ms. Cimaglia testified that Appellant's vehicle suddenly hit the Suzuki, pushed the Suzuki into one of the vehicles in the parking lot, and then Appellant's vehicle "proceeded to hit the [Volkswagen] in front of me head-on pretty hard." *Id.* at 22.

Lastly, the Appellant testified on his behalf. *Id.* at 25. The Appellant testified that he was driving down Old Pocasset Lane on the day of the accident. *Id.* Due to the rain, Appellant testified that he drove carefully and did not drive above the twenty miles per hour speed limit.

*Id.* at 26. Appellant further testified that the Suzuki suddenly pulled out in front of his vehicle, and as a result, he did not have time to avoid his vehicle colliding with the Suzuki. *Id.* Appellant attempted to apply the brakes, but his vehicle became uncontrollable. *Id.*

After hearing all the evidence, the Trial Magistrate explicitly adopted the testimony of Officer Martufi, Mr. Paolucci, and Ms. Cimaglia as her findings of fact. *Id.* at 30. The Trial Magistrate found these witnesses to be “highly credible,” and found their testimony to be clear and “very largely consistent.” *Id.* at 31. Based on the evidence presented, the Trial Magistrate determined that “there’s no dispute that [Appellant’s] speed was greater than 20 miles per hour.” *Id.* Furthermore, the Trial Magistrate concluded that Appellant (1) failed to “operate[] at a reduced speed in light of the weather conditions[,]” and (2) “was not traveling at a speed [ ] that was reasonable and prudent” so that he was unable to avoid a collision. *Id.* Accordingly, the Trial Magistrate sustained the charged violations. *Id.*

Thereafter, Appellant filed a timely appeal of the Trial Magistrate’s decision. Forthwith is this Panel’s decision.

## II

### Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

On appeal, Appellant contends that the Trial Magistrate’s decision sustaining the charged violations is “[i]n violation of constitutional or statutory provisions[,]” and “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” Sec. 31-41.1-8(f)(1), (5). Specifically, the Appellant maintains (1) that there was insufficient evidence presented at trial to support the charged violations, and (2) that sustaining violations of both §§

31-14-1 and 31-14-3 violate Appellant's constitutional right against double jeopardy. *See* Appellant's Notice of Appeal, at 2.

## A

### **Double Jeopardy**

Appellant asserts that the Trial Magistrate violated Appellant's constitutional right against double jeopardy by sustaining violations of both §§ 31-14-1 and 31-14-3 because the same conduct satisfies each charge. *See id.* The Double Jeopardy Clause contained in the Fifth Amendment of the United States Constitution is mirrored in Article 1, section 7, of the Rhode Island Constitution, which provides that “[n]o person shall be subject for the same offense to be twice put in jeopardy.” *See State v. Grayhurst*, 852 A.2d 491, 501 (R.I. 2004). The prohibition against double jeopardy “protects against ‘multiple punishments for the same offense.’” *Id.* (quoting *State v. Rodriguez*, 822 A.2d 894, 905 n. 13 (R.I. 2003)). In determining whether an accused is in danger of being punished twice for the same offense, “[t]he applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *Rodriguez*, 822 A.2d at 905 (quoting *Blockburger*, 284 U.S. 299, 304 (1932)).

Here, Appellant is charged with violating § 31-14-1, “Reasonable and prudent speed,” and § 31-14-3, “Conditions requiring reduced speed.” *See* Summons No. 18405501864. Section 31-14-1 provides:

“No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. *In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and*

the duty of all persons to use due care. Violations of this section are subject to fines enumerated in § 31-41.1-4.”

Sec. 31-14-1 (emphasis added). Similarly, § 31-14-3 states, in relevant part:

“(a) The driver of every vehicle shall, consistent with the requirements of § 31-14-1, drive at an appropriate, reduced speed when approaching and crossing an intersection or railroad grade crossing; when approaching and going around a curve; when approaching a hill crest; when traveling upon any narrow or winding roadway; *when special hazard exists with respect to pedestrians or other traffic or by reason of weather* or highway conditions; and in the presence of emergency vehicles displaying flashing lights as provided in § 31-24-31, tow trucks, transporter trucks, highway maintenance equipment displaying flashing lights (while performing maintenance operations), and roadside assistance vehicles displaying flashing amber lights while assisting a disabled motor vehicle. Violations of this section are subject to fines enumerated in § 31-41.1-4.”

Sec. 31-14-3(a) (emphasis added). The Sixth Division District Court has previously considered whether the prohibition against double jeopardy is violated when a motorist is found guilty of violating §§ 31-14-1 and 31-14-3 in *Toth v. Rhode Island Traffic Tribunal*, A.A. 06-98 (2007). In *Toth*, the District Court held that “the charges are sufficiently distinct” because “a violation of R.I.G.L. § 31-14-1 entails the failure to maintain control resulting in a collision whereas § 31-14-3 requires only reduced speed under certain conditions.” *Id.* at 6. In doing so, the District Court noted that “[t]he court looks to the charges not to the conduct[;]” thus “[t]he same conduct can violate a number of statutes resulting in multiple charges.” *Id.*; *see also Grayhurst*, 852 A.2d at 501 (“[A]lthough both the contempt charge and the assault charges arise out of the same conduct, ‘each offense requires proof of a fact that the other does not.’”). Therefore, the District Court determined that finding a motorist guilty of both charges does not violate the Double Jeopardy Clause.<sup>1</sup> *Id.*

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<sup>1</sup> The Appellant’s reliance on *State v. Brown*, 97 R.I. 115, 196 A.2d 133 (1963), and *State v. Marsocci*, 98 R.I. 478, 204 A.2d 639 (1964), is misplaced as neither case addresses the Double

In light of the guidance provided by our case law, it is clear that §§ 31-14-3 and 31-14-1 do not punish the same conduct because each offense “requires proof of a fact that the other does not.” *See Rodriguez*, 822 A.2d at 905. Section 31-14-3 requires that motorists “drive at an appropriate, reduced speed” when one of the delineated conditions exists. Sec. 31-14-3(a); *see also Alessi v. Bowen Court Condo.*, 44 A.3d 736, 740 (R.I. 2012) (“It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.”). On the other hand, § 31-14-1 requires that “speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway[.]” Sec. 31-14-1; *see Alessi*, 44 A.3d at 740.

Sections 31-14-1 and 31-14-3 are “sufficiently distinct” because § 31-14-3 requires at least one of the stated conditions, such as weather hazards or engaged emergency vehicles, be present while § 31-14-1 does not require those specific conditions be present. *See Grayhurst*, 852 A.2d at 501. For instance, a motorist driving at an unreasonable speed such that he or she cannot avoid colliding with another vehicle violates § 31-14-1, but not § 31-14-3 because none of the conditions set forth in § 31-14-3 is present. *See id.* (no double jeopardy violation where defendant charged with both contempt and assault of a police officer after kicking and causing serious injury to the sheriff who escorted him into the courtroom because despite arising from the same incident, each charge requires proof of different elements). Accordingly, charging a

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Jeopardy Clause. *Brown* and *Marsocci* stand for the proposition that a complaint charging only § 31-14-1 is “so lacking in definiteness that a person of ordinary intelligence could not know at what speed he could drive and be within the law.” *Marsocci*, 98 R.I. at 478, 204 A.2d at 639 (quoting *Campbell*, 97 R.I. at 11, 196 A.2d at 131). Therefore, a complaint charging a motorist with § 31-14-1 must reference the standards of §§ 31-14-2 or 31-14-3 in order to apprise the motorist of the legislative standard for determining a “reasonable and prudent speed” in the circumstances in which he finds himself. *Campbell*, 97 R.I. at 112, 196 A.2d at 132.

motorist with violations of both §§ 31-14-1 and 31-14-3 does not violate the prohibition against double jeopardy.

In the instant matter, pursuant to § 31-14-3, the heavy rainfall required Appellant to reduce his speed. (Tr. at 3; 20; 24.) Thus, Appellant violated § 31-14-3 when he failed to reduce his speed while driving in heavy rainfall, so Appellant's violation of § 31-14-3 occurred irrespective of the collision. In addition, Appellant violated § 31-14-1 because the high rate of speed at which he drove rendered him unable to avoid colliding with the Suzuki. Appellant's violations of §§ 31-14-1 and 31-14-3, though arising out of the same conduct, are separate and distinct offenses. *See Grayhurst*, 852 A.2d at 501. Therefore, the Trial Magistrate's decision is not in violation of constitutional or statutory provisions. See. § 31-41.1-8(f)(1).

## **B**

### **Sufficiency of the Evidence**

Appellant also argues that the Trial Magistrate lacked sufficient evidence to support her decision finding Appellant guilty of violating §§ 31-14-1 and 31-14-3 because the Appellant testified that he drove carefully on the day of the accident when the Suzuki suddenly pulled in front of his vehicle. *See* Appellant's Notice of Appeal, at 2. However, it is well-established that this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). The weight accorded to evidence "is determined by the touchstone of credibility. That touchstone, however, is not available to the [appellate division] which never sees the witness or hears him testify and which, on review, look only at a silent record." *Id.* (citing *Laganiere*, 103 R.I. at 196, 236 A.2d at 259) (brackets in original). As this Panel did not observe the witnesses testify, this Panel can neither assess the demeanor of the

testifying witness, nor can it disturb a Trial Magistrate's findings of credibility. *A. Salvati Masonry Inc.*, 151 A.3d at 749 (quoting *Van Dongen*, 132 A.3d at 1076); *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537).

Here, the record is clear that the Trial Magistrate explicitly credited the consistent testimony of Officer Martufi, Mr. Paolucci, and Ms. Cimaglia regarding Appellant's high rate of speed and how the accident occurred. (Tr. at 30-31.) In doing so, the Trial Magistrate implicitly rejected Appellant's conflicting testimony that he drove below the twenty miles per hour speed limit. *Id.*; see *Turgeon v. Davis*, 120 R.I. 586, 592, 388 A.2d. 1172, 1175 (1978) ("Where the testimony of two witnesses is conflicting and the trier of fact expressly accepts the testimony of one of the witnesses, he implicitly rejects that of the other."). Accordingly, this Panel, looking only at a silent record, will not disturb the Trial Magistrate's decision to expressly accept the testimonies of Officer Martufi, Mr. Paolucci, and Ms. Cimaglia, thereby implicitly rejecting the testimony of Appellant. *Id.*

Furthermore, the Trial Magistrate reasonably inferred "based on the fact that there were three cars involved in this accident, [ ] that the [Appellant's] car [ ] went airborne and caused significant damage to these vehicles, that there was a high rate of speed involved." Tr. at 31; see also *DeSimone Elec., Inc. v. CMG, Inc.*, 901 A.2d 613, 621 (R.I. 2006) ("During his or her fact-finding process, the trial justice may 'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'"). Thus the testimony of the credible witnesses and the fact that there was an accident in this case provided the Trial Magistrate with a sufficient evidentiary basis to conclude (1) that the weather conditions required reduced speeds, and (2) that Appellant failed to drive at

the reasonable and prudent speed required by the hazards then existing on the roadway. Tr. at 31; *see* §§ 31-14-3 and 31-14-1.

As such, this Panel will not disturb the Trial Magistrate's Decision as it is properly supported by sufficient evidence contained within the record. Accordingly, this Panel concludes that the Trial Magistrate's decision was not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *See* § 31-41.1-8(f)(5).

## IV

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was neither in violation of constitutional or statutory provisions nor clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(1), (5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

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Administrative Magistrate Joseph A. Abbate (Chair)

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Associate Judge Lillian M. Almeida

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Chief Magistrate Domenic A. DiSandro, III

DATE: \_\_\_\_\_